

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.2467 OF 2007

M/S.BIRLA TYRES

APPELLANT (S)

VERSUS

COMMISSIONER OF COMMERCIAL
TAXES & ORS.

RESPONDENT (S)

WITH

CIVIL APPEAL NO.2468 OF 2007

AND WITH

CIVIL APPEAL NO.2469 OF 2007

O R D E R

1. Since the facts and issue(s) involved in all the aforesaid Civil Appeals are similar, we would only notice the facts in Civil Appeal No.2467 of 2007 for convenient disposal of this batch of appeals.

2. This appeal is directed against the judgment and order passed by the High Court of Orissa in Writ Petition(C) No.10017 of 2006, dated 14.08.2006. By the impugned judgment and order, the High Court has observed that the writ petition is non-maintainable due to availability of an alternate remedy and rejected the Writ Petition filed by the appellant.

3. We have heard learned counsel for the parties to the *lis* and carefully perused the judgment(s) and order(s) passed by the High Court and authorities below.

4. The issue involved in this appeal primarily pertains to computation of tax liability of the appellant(s).

5. In our considered view, the aforesaid is a mixed question of fact and law and therefore, the appellant(s) first ought to agitate the said issue before the final fact finding authority such as the Appellate Forum or

the Tribunal or the Board instead of approaching the Writ Courts for redressal of the said controversy.

6. In view of the above, we now direct the appellant(s) herein to file an appeal before the appropriate authority, if it so desires, within a month's time from today. If such an appeal is filed, and if, for any reason, the appellant(s) takes up the issue of the jurisdiction of the authorities in quantifying the tax liability, the appellate authority/ Tribunal/Board will decide that issue as the preliminary issue and thereafter decide on merits of the case.

7. It is brought to our notice that this Court, while entertaining the Special Leave Petition, vide order dated 11.09.2006, had granted interim stay of recovery, that is still operating against the respondent(s). In view of the aforesaid directions passed by us, the interim order granted by this Court shall enure to the benefit of the appellant(s) till the

disposal of the appeal.

8. All the contentions of both the parties are left open to be agitated before the appellate Authority/ Tribunal/ Board. The Civil Appeal is disposed of accordingly.

C.A.No.2468 and 2469 of 2007:

9. These appeals are disposed of in the same terms, conditions, observations and directions as above.

Ordered accordingly.

.....CJI.
(H.L. DATTU)

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI;
MARCH 18, 2015

ITEM NO.107

COURT NO.1

SECTION IIIA

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 2467/2007

M/S BIRLA TYRES

Appellant(s)

VERSUS

COMMR.OF COMMERCIAL TAXES & ORS

Respondent(s)

WITH C.A. No. 2468/2007

With C.A. No. 2469/2007

Date : 18/03/2015 These appeals were called on for hearing today.

CORAM :

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE ARUN MISHRA
HON'BLE MR. JUSTICE AMITAVA ROYFor Appellant(s) Mr.Laxmi Kumaran, Adv.
Mr.M.P.Jena, Adv.
Ms. Bina Gupta,Adv.
Mr.Abhay A.Jena, Adv.

Mr.M.P.Devanath,Adv.

For Respondent(s) Mr.Soumitra G.Chaudhuri, Adv.
Mr. Anip Sachthey,Adv.Mr.Rakesh Dwivedi, Sr.Adv.
Mrs. Kirti Renu Mishra,Adv.
Ms.Sansriti Pathak,Adv.UPON hearing the counsel the Court made the following
O R D E RThe Civil Appeals are disposed of, in terms of the signed
order.(G.V.Ramana)
Court Master

(Signed order is placed on the file)

(Vinod Kulvi)
Asstt.Registrar